

COMPUTER SOFTWARE SUPPORT AGREEMENT

Spillman
Copy

This Support Agreement ("this Agreement") is made and entered into this 29 day of January 1992
by and between:

SPILLMAN DATA SYSTEMS, INC. ("Spillman")
910 SOUTH STATE
LOGAN, UTAH 84321
(801)753-1610

AND

Asotin County Sheriff ("Customer")
P.O. Box 130
Asotin, WA 99402
(509) 243-4171

WITNESSETH:

WHEREAS, Spillman and Customer entered into that certain End-User License Agreement dated 1-29, 1992 (the "License Agreement") under which Customer obtained a non-exclusive, nontransferable license to use certain computer software in object code form and related user documentation (the "Licensed Program") on certain terms and conditions;

WHEREAS, Spillman desires to offer Customer certain services with respect to the Licensed Program on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

- 1.1 "Software Order." A Spillman order form identifying software modules purchased by the customer from Spillman which has been signed and accepted by the customer and has been accepted by Spillman.

- 1.2 "Licensed Program." The computer software known as SPILLMAN Public Safety Software, which was developed by Spillman and for which customer is paying a maintenance fee to Spillman as identified in a Software Order, including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Customer under this Agreement or License Agreement. This excludes computer software not developed by Spillman which might be used in conjunction with the SPILLMAN Public Safety Software, such as word processors, spreadsheets, terminal emulators, etc.
- 1.3 "Agreement Term." An initial period of one (1) year, commencing on the first day following the warranty period that applies to the Licensed Program pursuant to the License Agreement. Thereafter, the Agreement Term shall automatically renew for successive periods of one year each unless and until terminated pursuant to Section 6 hereof. In no event, however, shall the Agreement Term extend beyond the prescribed term of the License Agreement.
- 1.4 "Error." Any failure of the Licensed Program to conform in all material respects to the functional specifications for the Licensed Program published from time to time by Spillman. However, any nonconformity resulting from Customer's misuse or improper use of the Licensed Program or combining or merging the Licensed Program with any hardware or software not supplied by Spillman, or not authorized to be so combined or merged by Spillman, shall not be considered an Error. Nor shall Licensed Program or datafile damage resulting from unauthorized software alterations (including problems, errors, or malfunctions caused or created by the operator), customizing of programs, accident, neglect, power surge or failure, lightening, operating environment not in conformance with the manufacturer's specifications (for electric power, air quality, humidity or temperature), operating system errors, or hardware malfunction be considered an Error.
- 1.5 "Error Correction." Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such nonconformity. Not covered under Error Correction is the responsibility for datafile damage due to software or hardware malfunction.
- 1.6 "Enhancement." Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by Spillman as minor or major, depending on Spillman's assessment of their value and of the function added to the preexisting Licensed Program.
- 1.7 "Coverage Hours." The days and times when Software Support is offered as described in Appendix B.
- 1.8 "Response Time." The maximum number of Coverage Hours between the time that Spillman verifies that an error is present and the time that Spillman initiates work toward development of an error correction. This maximum number of Coverage Hours is specified in Appendix B.
- 1.9 "Releases." New versions of the Licensed Program, which new versions may include both Error Corrections and Enhancements.

- 1.10 "System Administrator." An agent of Customer with sufficient training and/or experience with a Software Product to communicate effectively with the Spillman Support personnel.

Section 2

ELIGIBILITY FOR SUPPORT

To be eligible for support for a Software Product, Customer must meet the following requirements. Acceptance of this Agreement by Spillman is conditioned upon confirmation by Spillman that a Software Product is eligible for support. Customer agrees that the obligation of Spillman to continue to provide Services with respect to a Software Product shall terminate if, at any time during the term of this Agreement, these requirements are not met. Nothing in this Agreement shall be construed to obligate Spillman to make available to Customer support for a Software Product for so long as Customer shall have a valid Software Agreement for such Software Product.

To be eligible for Software Support for a Software Product, Customer must meet all of the following requirements:

- A. Customer has a valid Software Agreement for the Software Product;
- B. Customer has a System Administrator; and
- C. The hardware configuration on which the Software Product is to be used is supported by Spillman.

Spillman may require Customer to appoint a new System Administrator if Spillman determines that the System Administrator does not have the training or experience necessary to communicate effectively with the Computer Systems Support Personnel.

Section 3

SCOPE OF SERVICES

- 3.1 During the Agreement Term, Spillman shall render the following services in support of the Licensed Program, during Coverage Hours, subject to the compensation fixed for each type of service in Spillman's current rate schedule:
- a. Spillman shall maintain a program control center capable of receiving by telephone any operator reports of system irregularities.
 - b. Spillman shall maintain a telephone hot line that allows Customer to report system problems and seek assistance in use of the Licensed Program.
 - c. Spillman shall maintain a trained staff capable of rendering the services set forth in this Agreement.

- d. Spillman shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to Spillman in accordance with Spillman's standard reporting procedures. Spillman shall, after verifying that such an Error is present, initiate work in a diligent manner toward development of an Error Correction within Response Time. Following completion of the Error Correction, Spillman shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and Spillman shall include the Error Correction in all subsequent Releases of the Licensed Program. Spillman shall not be responsible for correction Errors in any version of the Licensed Program other than the most recent Release of the Licensed Program, provided that Spillman shall continue to support prior Releases superseded by recent Releases for a reasonable period sufficient to allow Customer to implement the newest Release, not to exceed 180 days.
- e. Spillman may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections, minor Enhancements, and, in certain instances if Spillman so elects, major Enhancements. Spillman shall provide Customer with one copy of each new Release, without additional charge. Spillman shall provide reasonable assistance to help Customer install and operate each new Release, provided that such assistance, if required to be provided at Customer's facility, shall be subject to the supplemental charges set forth in Spillman's current rate schedule.
- f. Subject to space availability and training fees, Customer may enroll its employees in Spillman's training classes, held at Spillman's facility in Logan, Utah, for regular or advanced training.
- g. Spillman shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Spillman and Customer.

Section 4

OBLIGATION OF CUSTOMER

- 4.1 Customer shall provide access to its facilities in connection with the performance of Spillman of its obligations hereunder. No charge shall be made for such access. It is agreed that prior notification will be given when access is required.
- 4.2 Customer must provide Spillman with information sufficient for Spillman to duplicate the circumstances under which a Problem in a Software Product became apparent.
- 4.3 Customer must maintain a modem and data set connected to the direct dial network near any CPU used with a Software Product being maintained by Spillman hereunder and provide access to a voice grade local telephone.

- 4.4 A representative of Customer must be present when any on-site support is provided. Customer agrees that if such representative is not present when the Spillman representative arrives on site, no work will be performed and Customer will be charged for such Spillman representative.
- 4.5 All communications by Customer to Spillman must be in the English language.
- 4.6 Customer is responsible for selecting a System Administrator who is qualified to operate the Licensed Program the Customer's hardware and the Operating System. The System Administrator must be familiar with the information, calculations, and reports that serve as input and output of the Licensed Program. Spillman reserves the right to refuse assistance or to charge additional fees if a System Administrator seeks assistance with respect to such basic background information or any other matters not directly related to the operation of the Licensed Program.
- 4.7 Only a System Administrator listed in Appendix A shall contact Spillman for support. Customer may change its authorized System Administrator upon ten (10) days prior written notice to Spillman. Customer hereby authorizes its designated System Administrator to incur, on its behalf, billable work.

Section 5

FEES AND CHARGES

- 5.1 Customer shall pay Spillman its fees and charges based on the Software Order. The Software Order is attached to and a part of this Agreement. Additional Software Orders may be signed with Spillman from time to time and will be a part of this agreement. Spillman reserves the right to change its Maintenance Fees from time to time, provided that no such change will be effective until at least 90 days after Spillman has given Customer written notice of such change. Fee changes will result from changes in (1) Software Prices, (2) Increases in the number of modules, (3) Increase in the number of users on the system, (4) Changes in the computer hardware or (5) Selection by the Customer of a different level of Software Maintenance. At the signing of this Agreement, the Customer has selected the level specified in Appendix B. The Customer may change the level by signing a Change In Level Form, which form, when signed, will be attached to and become a part of this Agreement.
- 5.2 Spillman shall invoice Customer at the beginning of each fiscal year for all fees. Charges accrued and all reimbursable expenses incurred shall be invoiced at the beginning of the next calendar month. Customer shall pay the invoiced amounts immediately upon receipt of such invoices. Any amount not paid within thirty (30) days after the invoice date shall bear interest at the lesser of eighteen (18) percent per year or the highest rate allowed by applicable law.
- 5.3 Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, and other hardware (other than the hardware constituting the program control center maintained at Spillman facilities) necessary to operate the Licensed Software and to obtain from Spillman the services called for by this Agreement.

Section 6

PROPRIETARY RIGHTS

- 6.1 To the extent that Spillman may provide Customer with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works prepared by Spillman (collectively, "Vendor Programs"), Customer may (1) install one set of the Vendor Programs in the most current form provided by Spillman, in Customer's own facility; (2) use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the License Agreement, for purposes of serving Customer's internal business needs; and (3) make one copy of the Vendor Programs in machine-readable form for nonproductive backup purposes only. Customer may not use, copy, or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Spillman. Notwithstanding Section 6 hereof, Customer's rights under this Section 5.1 shall remain in effect for so long as Customer is authorized to use the Licensed Programs under the License Agreement. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purposes.
- 6.2 The Vendor Programs are and shall remain the sole property of Spillman, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Spillman for the use of the work product. Customer shall from time to time take any further action and execute any further instrument, including documents of assignment or acknowledgement, that Spillman may reasonably request in order to establish and perfect its exclusive ownership rights in such works. Customer shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development.

Section 7

DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

- 7.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SPILLMAN EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 7.2 In no event shall Spillman's cumulative liability for any claim arising in connection with this Agreement exceed the total fees and charges paid to Spillman by Customer within the last twelve (12) months. In no event shall Spillman be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Spillman knew or should have known of the possibility of such damages.

- 7.3 No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

Section 8

TERMINATION

- 8.1 This Agreement may be terminated as follows:
- a. This Agreement shall immediately terminate upon the termination of the License Agreement;
 - b. This Agreement may be terminated by either party upon the expiration of the then-current term of this Agreement, provided that at least 90 days' prior written notice is given to the other party; or
 - c. This Agreement may be terminated by either party upon 30 days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.
- 8.2 Following termination of this Agreement, Spillman shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Customer may continue to use any work supplied to Customer by Spillman for the remaining term of the License Agreement. Any amount not paid within thirty (30) days after the invoice date shall bear interest at the lesser of eighteen (18) percent per month or the highest rate allowed by applicable law.

Section 9

MISCELLANEOUS

- 9.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
- 9.2 This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Utah.
- 9.3 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

- 9.4 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties.
- 9.5 The waiver by either party or any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

[Customer]
Signed: Don R. Steele
Printed: Don R. Steele
Title: Sheriff
Date: 1-29, 1992

Accepted and Approved by Spillman:
Signed: Duane Barker
Printed: Duane Barker
Title: Vice President - Finance
Date: 1-6, 1992

APPENDIX A
SYSTEM ADMINISTRATORS

Asotin County Sheriff's Office

Customer Name _____

92-2044

Agreement No.

1/6/92

Date

SYSTEM ADMINISTRATORS

1. Name: _____
Title: _____
Office Phone Number: _____
Beeper Number: _____
Home Phone Number: _____
Mailing Address: _____

2. Name: _____
Title: _____
Office Phone Number: _____
Beeper Number: _____
Home Phone Number: _____
Mailing Address: _____

3. Name: _____
Title: _____
Office Phone Number: _____
Beeper Number: _____
Home Phone Number: _____
Mailing Address: _____

APPENDIX B

Level 3 support provides the customer with limited telephone support. This means that support can be obtained from SPILLMAN 9 hours a day (8am to 5pm Mountain Time), Monday through Friday.

Bill Rate	1.00
Guaranteed Response	6
Hours Per Day	9 M-F
Site Audit	Phone
Free Training	Upgrade Only

Bill Rate:

The bill rate refers to a percentage of the charge per hour, based on the Spillman Fee Schedule, for work performed outside of defined coverage. To calculate the actual rate which will be charged to the customer, multiply the Bill Rate above by the appropriate hourly rate appearing on the Spillman Fee Schedule.

Guaranteed Response Time:

Guaranteed response time is the maximum number of hours between the time of the client's call to Spillman and the time Spillman support personnel contact the client to begin looking into the problem. When a Level 3 customer calls Spillman support, they will be given the option of choosing a 6 or 8 working hours response time. Response time for calls received outside of normal working hours is adjusted as follows: half again for after-hours, twice for Sundays and holidays. For example, a 6 hour response time is adjusted to 9 hours after normal hours and 12 hours on Sundays and holidays. All calls received after hours, or those received between 8am and 5pm Monday through Friday, that require after hours work, will be subject to charges as described in the Spillman fee schedule.

Hours Per Day:

Hours Per Day is the number of hours that software support is offered. Level 3 Support is Monday through Friday, 9 hours/day (8am to 5pm Mountain Time) phone support option. Work performed outside of defined coverage is billed according to the Spillman fee schedule.

Site Audit:

Site Audits for Level 3 support are done annually over the telephone. The purpose of these audits is to document the system configuration, determine the effectiveness of training and support provided, and analyze the performance of both hardware and software. A booklet of data on the site will be prepared including information on disk drives, tape drives, terminals, printers, etc. and a schematic diagram showing the location of all devices. This document will be utilized by Spillman support personnel to assist them in supporting the customer. A copy of this document will also be provided to the customer.

Free Training:

Free "Upgrade Only" training included unlimited attendance, at the Spillman office, at upgrade training classes which are also attended by other agencies. All upgrade training is subject to Spillman training policies and will be scheduled at the discretion of Spillman personnel.



910 South State
Logan, Utah 84321
(801)753-1610

SALES ORDER

*Customer: Asotin County Sheriff's Office
P.O. Box 130
Asotin, WA 99402
Contact: Donald R. Steele
(509) 243-4171*

Date: 1/6/92

Order No: 2044

Law Enforcement Software Modules:

Hub
Records Management
Jail Management
Traffic Information
Civil Process

Level 3 Software Maintenance per year

\$ 5,054

This Software Order was filled by Spillman Data Systems, Inc. This is used only as an attachment to the Computer Software Support Agreement.

Approved By:

Name/Title

Date